

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LUIS GUZMAN, :
Plaintiff, :
: :
v. : :
: :
NANCY A. BERRYHILL, Acting : :
Commissioner of Social Security, : :
Defendant. : :
-----x

MEMORANDUM OPINION
AND ORDER

15 CV 3920 (VB)

Briccetti, J.:

Before the Court is Magistrate Judge Lisa Margaret Smith's Report and Recommendation ("R&R"), dated June 12, 2018 (Doc. #24), on the parties' cross-motions for judgment on the pleadings pursuant to Rule 12(c). (Docs. ##14, 19). Citing failure of the Administrative Law Judge to consult a medical advisor in establishing plaintiff's disability onset date or to consider plaintiff's own statement regarding his onset date, Judge Smith recommended denying defendant's motion, granting plaintiff's motion, and remanding the case for further administrative proceedings.

For the following reasons, the Court adopts the R&R. Defendant's motion is DENIED. Plaintiff's motion is GRANTED IN PART and DENIED IN PART WITHOUT PREJUDICE. This case is REMANDED for further administrative proceedings consistent with the R&R, pursuant to 42 U.S.C. § 405(g), sentence four.

Familiarity with the factual and procedural background of this case is presumed.

A district court reviewing a magistrate judge's report and recommendation "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Parties may raise objections to the magistrate judge's report and

recommendation, but they must be “specific[,] written,” and submitted within fourteen days after being served with a copy of the recommended disposition, Fed. R. Civ. P. 72(b)(2); see also 28 U.S.C. § 636(b)(1), or within seventeen days if the parties are served by mail, see Fed. R. Civ. P. 6(d).

Insofar as a report and recommendation addresses a dispositive motion, a district court must conduct a de novo review of those portions of the report or specified proposed findings or recommendations to which timely objections are made. 28 U.S.C. § 636(b)(1)(C). The district court may adopt those portions of a report and recommendation to which no timely objections have been made, provided no clear error is apparent from the face of the record. Lewis v. Zon, 573 F. Supp. 2d 804, 811 (S.D.N.Y. 2008); Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985). The clearly erroneous standard also applies when a party makes only conclusory or general objections, or simply reiterates his original arguments. Ortiz v. Barkley, 558 F. Supp. 2d 444, 451 (S.D.N.Y. 2008).

Neither party objected to Judge Smith’s thorough and well-reasoned R&R.

The Court has reviewed the R&R and finds no error, clear or otherwise.

The Court notes that plaintiff’s application for attorney’s fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d), is premature. See 28 U.S.C. § 2412(d)(1)(B) (“A party seeking an award of fees and other expenses shall, within thirty days of final judgment in the action, submit to the court an application for fees and other expenses.”). Moreover, plaintiff’s applications for attorney’s fees and for approval of the contingent fee arrangement between plaintiff and his counsel lack any supporting documentation.

Accordingly, if plaintiff wishes to apply for an award of fees and other expenses and for approval of his contingency fee arrangement, he must submit applications in accordance with 28 U.S.C. §2412(d)(1)(B) and 42 U.S.C. § 406(b).

CONCLUSION

The R&R is adopted as the opinion of the Court.

Defendant's motion for judgment on the pleadings is DENIED. (Doc. #14).

Plaintiff's motion for judgment on the pleadings is GRANTED IN PART and DENIED IN PART WITHOUT PREJUDICE. (Doc. #19).

The case is REMANDED to the Social Security Administration for further administrative proceedings consistent with the R&R, pursuant to 42 U.S.C. § 405(g), sentence four.

The Clerk is instructed to enter Judgment accordingly and close this case.

Dated: July 10, 2018
White Plains, NY

SO ORDERED:



Vincent L. Briccetti
United States District Judge